

flight crew employee will meet the hours of service requirement during the previous 12-month period if he or she has worked or been paid for not less than 60 percent of the employee's applicable monthly guarantee and has worked or been paid for not less than 504 hours.

(1) The *applicable monthly guarantee* for an airline flight crew employee who is not on reserve status is the minimum number of hours for which an employer has agreed to schedule such employee for any given month. The *applicable monthly guarantee* for an airline flight crew employee who is on reserve status is the number of hours for which an employer has agreed to pay the employee for any given month.

(2) The hours an airline flight crew employee has worked for purposes of the hours of service requirement is the employee's duty hours during the previous 12-month period. The hours an airline flight crew employee has been paid is the number of hours for which an employee received wages during the previous 12-month period. The 504 hours do not include personal commute time or time spent on vacation, medical, or sick leave.

(c) An airline flight crew employee returning from USERRA-covered service shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA-qualifying leave. Accordingly, an airline flight crew employee re-employed following USERRA-covered service has the hours that would have been worked for or paid by the employer added to any hours actually worked or paid during the previous 12-month period to meet the hours of service requirement. In order to determine the hours that would have been worked or paid during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations.

(d) In the event an employer of airline flight crew employees does not maintain an accurate record of hours worked or hours paid, the employer has the burden of showing that the em-

ployee has not worked or been paid for the requisite hours. Specifically, an employer must be able to clearly demonstrate that an airline flight crew employee has not worked or been paid for 60 percent of his or her applicable monthly guarantee or for 504 hours during the previous 12 months in order to claim that the airline flight crew employee is not eligible for FMLA leave.

§ 825.802 Special rules for airline flight crew employees, calculation of leave.

(a) *Amount of leave.* (1) An eligible airline flight crew employee is entitled to 72 days of FMLA leave during any 12-month period for one, or more, of the FMLA-qualifying reasons set forth in §§ 825.112(a)(1)–(5). This entitlement is based on a uniform six-day workweek for all airline flight crew employees, regardless of time actually worked or paid, multiplied by the statutory 12-workweek entitlement for FMLA leave. For example, if an employee took six weeks of leave for an FMLA-qualifying reason, the employee would use 36 days (6 days × 6 weeks) of the employee's 72-day entitlement.

(2) An eligible airline flight crew employee is entitled to 156 days of military caregiver leave during a single 12-month period to care for a covered servicemember with a serious injury or illness under § 825.112(a)(6). This entitlement is based on a uniform six-day workweek for all airline flight crew employees, regardless of time actually worked or paid, multiplied by the statutory 26-workweek entitlement for military caregiver leave.

(b) *Increments of FMLA leave for intermittent or reduced schedule leave.* When an airline flight crew employee takes FMLA leave on an intermittent or reduced schedule basis, the employer must account for the leave using an increment no greater than one day. For example, if an airline flight crew employee needs to take FMLA leave for a two-hour physical therapy appointment, the employer may require the employee to use a full day of FMLA leave. The entire amount of leave actually taken (in this example, one day) is designated as FMLA leave and counts

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against the employee's FMLA entitlement.

(c) *Application of § 825.205.* The rules governing calculation of intermittent or reduced schedule FMLA leave set forth in § 825.205 do not apply to airline flight crew employees except that airline flight crew employees are subject to § 825.205(a)(2), the physical impossibility provision.

§ 825.803 Special rules for airline flight crew employees, recordkeeping requirements.

(a) Employers of eligible airline flight crew employees shall make, keep, and preserve records in accordance with the requirements of Subpart E of this Part (§ 825.500).

(b) Covered employers of airline flight crew employees are required to maintain certain additional records "on file with the Secretary." To comply with this requirement, those employers shall maintain:

(1) Records and documents containing information specifying the applicable monthly guarantee with respect to each category of employee to whom such guarantee applies, including copies of any relevant collective bargaining agreements or employer policy documents; and

(2) Records of hours worked and hours paid, as those terms are defined in § 825.801(b)(2).